

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES L. PAYNE,
Plaintiff,

v.

PLACER COUNTY, et al.,
Defendants.

No. 2:21-cv-1910-EFB P

ORDER

Plaintiff is a county jail inmate proceeding without counsel in an action brought under 42 U.S.C. § 1983. In addition to filing a complaint (ECF No. 1), he has filed an application to proceed in forma pauperis (ECF No. 4).

Application to Proceed in Forma Pauperis

The court has reviewed plaintiff's application and finds that it makes the showing required by 28 U.S.C. § 1915(a)(1) and (2). Accordingly, by separate order, the court directs the agency having custody of plaintiff to collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C. § 1915(b)(1) and (2).

Screening Standards

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion

1 of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which
2 relief may be granted,” or “seeks monetary relief from a defendant who is immune from such
3 relief.” *Id.* § 1915A(b).

4 A pro se plaintiff, like other litigants, must satisfy the pleading requirements of Rule 8(a)
5 of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and
6 plain statement of the claim showing that the pleader is entitled to relief, in order to give the
7 defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v.*
8 *Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).
9 While the complaint must comply with the “short and plain statement” requirements of Rule 8,
10 its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 556
11 U.S. 662, 679 (2009).

12 To avoid dismissal for failure to state a claim a complaint must contain more than “naked
13 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of
14 action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of
15 a cause of action, supported by mere conclusory statements do not suffice.” *Iqbal*, 556 U.S. at
16 678.

17 Furthermore, a claim upon which the court can grant relief must have facial plausibility.
18 *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual
19 content that allows the court to draw the reasonable inference that the defendant is liable for the
20 misconduct alleged.” *Iqbal*, 556 U.S. at 678. When considering whether a complaint states a
21 claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v.*
22 *Pardus*, 551 U.S. 89 (2007), and construe the complaint in the light most favorable to the
23 plaintiff, *see Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

24 Screening Order

25 Plaintiff’s complaint is against defendants Placer County, Sheriff Devon Bell, and Deputy
26 Sheriff Mackenstad. As best the court can tell, plaintiff claims that Mackenstad “lied under oath”
27 at a preliminary hearing concerning a burglary charge against plaintiff. ECF No. 1 at 2. Plaintiff
28 claims that if Mackenstad had not lied, the outcome of the preliminary hearing would have been

1 different. *Id.* Plaintiff claims that the false information caused him mental and emotional stress
2 and he identifies his claim as one of “mental & emotional distress.” *Id.* Plaintiff seeks injunctive
3 relief and \$25,000 in damages. *Id.* at 4. As discussed, below, plaintiff’s complaint must be
4 dismissed.

5 First, the complaint fails to set forth a basis for federal jurisdiction. Fed. R. Civ. P 8(a)(1).
6 It does not include a properly-pled federal cause of action that would permit federal question
7 jurisdiction. *See* 28 U.S.C. §§ 1331 (“The district courts shall have original jurisdiction of all
8 civil actions arising under the Constitution, laws, or treaties of the United States). Nor does it
9 establish diversity of the parties to support diversity jurisdiction. *See* 28 U.S.C. § 1332; *Bautista*
10 *v. Pan American World Airlines, Inc.*, 828 F.2d 546, 552 (9th Cir. 1987) (to establish diversity
11 jurisdiction, a plaintiff must specifically allege the diverse citizenship of all parties, and that the
12 matter in controversy exceeds \$75,000.).

13 Second, even liberally construed as an attempt to state a federal constitutional claim
14 alleging a violation of due process, the claim fails. It is apparent from plaintiff’s allegations that
15 he is presently involved in proceedings in which he is a criminal defendant. Claims challenging
16 aspects of the proceedings and rulings in an ongoing case must be raised in those proceedings or
17 on appeal afterwards. This court must abstain from hearing those challenges based on the
18 *Younger* Abstention Doctrine. *See Younger v. Harris*, 401 U.S. 37, 45, 46 (1971). *Younger*
19 requires a district court to dismiss a federal action if the relevant state proceedings are: (1)
20 ongoing, (2) implicate important state interests, and (3) provide plaintiff an adequate opportunity
21 to raise the federal issue. *Columbia Basin Apartment Ass’n v. City of Pasco*, 268 F.3d 791, 799
22 (9th Cir. 2001). All of these elements appear satisfied here – the criminal proceedings appear to
23 be ongoing, important state interests are implicated in a criminal prosecution, and there is no
24 indication that plaintiff could not raise his claims in his criminal cases. Further, there is no
25 allegation of extraordinary circumstances which would warrant federal intervention. *See*
26 *Younger*, 401 U.S. at 45 (federal courts may not intervene in state criminal actions “except under
27 extraordinary circumstances where the danger of irreparable loss is both great and immediate.”).

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1 The court notes, however, that if plaintiff has since been convicted of the burglary, his
 2 claim is still barred by *Heck v. Humphrey*, 512 U.S. 477, (1994). *Heck* holds that if success in a
 3 section 1983 action would implicitly question the validity of confinement or its duration, the
 4 plaintiff must first show that the underlying conviction was reversed on direct appeal, expunged
 5 by executive order, declared invalid by a state tribunal, or questioned by the grant of a writ of
 6 habeas corpus. *Muhammad v. Close*, 540 U.S. 749, 751 (2004). If plaintiff were to succeed on
 7 his claim against Mackenstad, it would call into question the validity of his conviction and
 8 confinement. As a general rule, a challenge in federal court to the fact of conviction or the length
 9 of confinement must be raised in a petition for writ of habeas corpus pursuant to 28 U.S.C.
 10 § 2254. *See Preiser v. Rodriguez*, 411 U.S. 475 (1973).

11 In an abundance of caution, the court will grant plaintiff an opportunity to clarify his
 12 claim(s) in an amended complaint.

13 Leave to Amend

14 Plaintiff is cautioned that any amended complaint must identify as a defendant only
 15 persons who personally participated in a substantial way in depriving him of his constitutional
 16 rights. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the
 17 deprivation of a constitutional right if he does an act, participates in another's act or omits to
 18 perform an act he is legally required to do that causes the alleged deprivation). Plaintiff may also
 19 include any allegations based on state law that are so closely related to his federal allegations that
 20 "they form the same case or controversy." *See* 28 U.S.C. § 1367(a).

21 The amended complaint must also contain a caption including the names of all defendants.
 22 Fed. R. Civ. P. 10(a).

23 Plaintiff may not change the nature of this suit by alleging new, unrelated claims. *See*
 24 *George*, 507 F.3d at 607. Nor, as mentioned above, may he bring unrelated claims against
 25 multiple defendants. *Id.*

26 Any amended complaint must be written or typed so that it so that it is complete in itself
 27 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended
 28 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the

earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114 F.3d 1467, 1474 (9th Cir. 1997) (the “amended complaint supersedes the original, the latter being treated thereafter as non-existent.”) (*quoting Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967)).


Any amended complaint should be as concise as possible in fulfilling the above requirements. Fed. R. Civ. P. 8(a). Plaintiff should avoid the inclusion of procedural or factual background which has no bearing on his legal claims. He should also take pains to ensure that his amended complaint is as legible as possible. This refers not only to penmanship, but also spacing and organization. Plaintiff should carefully consider whether each of the defendants he names actually had involvement in the constitutional violations he alleges. A “scattershot” approach in which plaintiff names dozens of defendants will not be looked upon favorably by the court.

Conclusion

Accordingly, it is ORDERED that:

1. Plaintiff’s application to proceed in forma pauperis (ECF No. 4) is granted;
2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected in accordance with the notice to the Placer County Sheriff filed concurrently herewith;
3. Plaintiff’s complaint (ECF No. 1) is dismissed with leave to amend within 30 days from the date of service of this order; and
4. Failure to comply with any part of this this order may result in dismissal of this action.

DATED: November 9, 2021.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE